IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WePAY GLOBAL PAYMENTS LLC,	
Plaintiff,	
v.	**Case No. 22 C 1064**
McDONALD'S CORPORATION,	**Judge Harry D. Leinenweber**
Defendant.	

MEMORANDUM OPINION AND ORDER

I. BACKGROUND

WePay Global Payments LLC ("WePay") is the owner of a United States Design Patent No. D930,702 (the "702 Patent") that is entitled "Display Screen with animated user interface." (702 Patent at 1, Compl. at 7, Dkt. No. 1-1.) It is suing McDonald's Corporation ("McDonald's") for infringement. McDonald's has moved for dismissal under FED. R. CIV. P. 12(b)(6) for failure to state a claim that is plausible on its face. (Dkt. No. 15.)

The Complaint describes the patent in suit as "a unique ornamental design for a display screen portion with animated graphic user interface" ("GUI"). (Compl. ¶ 8, Dkt. No. 1.) A GUI is a way to command a computer operating system using graphic symbols. *Graphical User Interface Law & Legal Definition*, USLEGAL.COM, http:// definitions.uslegal.com/g/graphical-user-interface/ (last visited Nov. 18, 2022). GUIs have been around

since the 1970s. *Id.* Elements include a window that displays information on the screen, a menu that contains a list of selections that allows the user to make choices, and small picture icons. *Graphical User Interface (GUI)*, TUTORIALS POINT, https://www.tutorialspoint.com/graphical-user-interface-gui (last visited Nov. 28, 2022).

II. LEGAL STANDARD

To survive a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has factual plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although the Complaint need not contain specific facts, it must provide the defendant with "fair notice" of the plaintiff's claim and the ground upon which it rests. *Indep. Tr. Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 934 (7th Cir. 2012) (citing *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)). A district court may dismiss with prejudice when the plaintiff fails to demonstrate how an amendment would cure the deficiencies in the

Complaint. *Gonzalez-Koeneke v. West*, 791 F.3d 801, 808 (7th Cir. 2015).

III. DISCUSSION

The Complaint does not describe with words the McDonald's app that allegedly infringes the 702 patent. Instead, the Complaint shows pictures of the app. The first picture shows a graphic containing a series of squares and the words "Earn Points." (Claim Charts, Compl. at 15, 19, Dkt. No. 1-2.) There is a total of eight squares, three of which are at the SW, NW, and NE corners that form the shape of a larger square. (*Id.*) In the remaining corner (SE) is a series of smaller squares, four of which are located at the four corners and the fifth square in the middle. (*Id.*) The second picture shows an order form that lists McDonald's menu with pictures of the food items together with their descriptive names. (*Id.* at 16, 20.) The third picture shows a list of available condiments, such as cream, sugar, salt, and pepper. (*Id.* at 17, 21.) There are other check boxes located at the bottom of the second and third picture, such as "home," "order," and "earn points." (*Id.* at 16, 17, 20, 21.)

WePay compares these three McDonald's pictures with three of the five "drawing sheets" of the patent at issue. (702 Patent, Compl. at 9-13, Dkt. No. 1-1.) Figure 3 shows a zero dollar ($0.00) over a square with three smaller squares at the corners (SW, MW,

and NE) and the words "Send", "Request", and "Split" at the bottom. (*Id.* at 11.) The big box consists of broken lines, and each smaller box consists of a small solid square surrounded by two larger dotted line squares. (*Id.*) Figure 4 of the patent in suit consists of an oblong at the top of the figure created by a west to east dotted line. (*Id.* at 12.) Beneath the oblong is a series of dotted line" circles, consisting of two rows of three circles at the top, with four similar sized circles extending down along the left edge. (*Id.*) Figure 5 consists of the zero dollar ($0.00) with a large, dotted line square beneath it. (*Id.* at 13.) The word "cancel" is at the bottom. (*Id.*)

Both sides agree that to prove infringement, the claim must withstand the "ordinary observer test," which considers whether "in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same." *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 670 (Fed. Cir. 2008) (*en banc*). Moreover, design patents only protect "the novel, ornamental features of the patented design." *Oddz Products, Inc. v. Just Toys Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997). The overall impression is the key and there is no infringement if it is based solely on a similarity of a specific feature where the overall design is dissimilar. *Id.* In other words, the comparison is of the design as a whole, not a specific point or points of

novelty. *Hall v. Bed, Bath and Beyond*, 705 F.3d 1357 (Fed. Cir. 2013).

As far as the Court can tell, Plaintiff's main argument is that the series of three boxes of indeterminate size on Figure 3, are comparable to McDonald's symbol of 8 boxes which are on the same page as the list of its specials of the day. (The boxes are considered of indeterminate size because Plaintiff disclaimed any specific size or distance between them. This means that the boxes could be of any size or location, *vis-a-vis*, each other.) Figure 4, the page with the ten-circle page, presumably is meant to be confusingly similar to any app that includes a menu such as McDonald's. Figure 5, the square of indeterminate size, is presumably meant to be confusingly similar to the third McDonald's screen, which depicts a list of condiments.

After reviewing the Plaintiff's exhibit, the Court does not see how any observer, ordinary or extraordinary for that matter, could ever find McDonald's app confusingly similar to Plaintiff's patented design. Comparing three boxes of indeterminate size with a list of McDonald's specials or comparing a series of ten circles of indeterminate size with McDonald's menu, or, comparing a plain box of indeterminate size with a list of condiments, could not possibly result in a confused observer. Plaintiff's design appears to be the antithesis of what a design patent is supposed to

protect, i.e., novel, and ornamental features. *Oddz Productions*, 122 F.3d at 1405.

As pointed out above, GUI apps have been around a long time. Plaintiff's attempt to compare what is essentially nothing but unadorned squares and circles with McDonald's sales items, food menu, and condiments, might perhaps be good fodder for a Seinfeld episode, but borders on the ridiculous in a federal court. Plaintiff, arguing against a Motion to Dismiss under *Iqbal* and *Twombly*, says that the Complaint gives McDonald's notice of its claim, which it feels is sufficient to withstand a motion to dismiss. While it may put McDonald's on notice of the nature of its claim, it does nothing to give it any plausibility. The Motion to Dismiss is granted. Because any amendments would be futile, the dismissal is with prejudice.

IV. CONCLUSION

For the reasons state herein, McDonald's Motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) is granted with prejudice.

IT IS SO ORDERED.

Harry D. Leinenweber, Judge
United States District Court

Dated: 11/29/2022

APPENDICES

Appendix A – Patent

Appendix B – Claim Chart – Count I

Appendix C – Claim Chart – Count II

APPENDIX A

PATENT

US00D930702S

(12) United States Design Patent

Grecia

(10) Patent No.: US D930,702 S
(45) Date of Patent: ** Sep. 14, 2021

(54) **DISPLAY SCREEN PORTION WITH ANIMATED GRAPHICAL USER INTERFACE**

(71) Applicant: **William Grecia**, Downingtown, PA (US)

(72) Inventor: **William Grecia**, Downingtown, PA (US)

(73) Assignee: **WEPAY GLOBAL PAYMENTS LLC**, Middletown, DE (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/749,131**

(22) Filed: **Sep. 3, 2020**

(51) **LOC (13) Cl.** **14-04**

(52) **U.S. Cl.**
USPC **D14/492**; D14/490

(58) **Field of Classification Search**
USPC 345/1.1, 1.2, 2.1–2.3, 3.1, 902; 715/763, 715/810, 836, 837, 846, 847, 977; D14/485–495
CPC B60K 37/00; G06F 3/048–04897; G06F 3/013; G06F 3/017; G06F 3/165; G06F 3/197; G06F 17/212; G06T 13/80; G06T 15/02; G06Q 10/10; H04M 1/0277; H04M 1/0202; H04M 1/02; H04M 1/6075; H04M 3/567; H04M 1/2477; H04M 1/26; H04M 1/274582; H04L 12/581; H04L 12/813; H04L 12/1813; H04N 7/16
See application file for complete search history.

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D697,074 S	*	1/2014	Waldman	D14/485
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(Continued)

Primary Examiner — Cary M Robinson

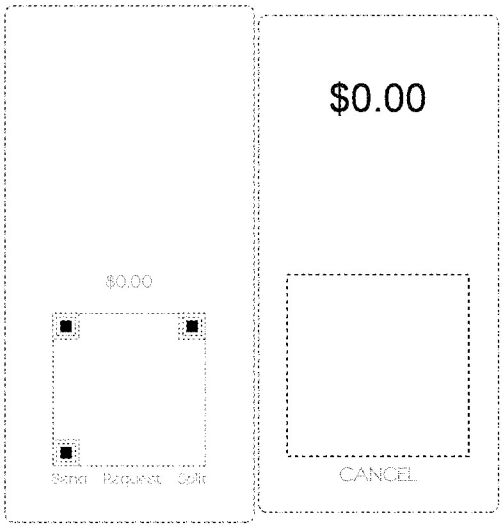
(57) **CLAIM**

The ornamental design for a display screen portion with animated graphical user interface, as shown and described.

DESCRIPTION

FIG. **1** is a front view of a first image of a first embodiment of a display screen portion with animated graphical user interface showing my new design;
FIG. **2** is a front view of a second image thereof;
FIG. **3** is a front view of a first image of a second embodiment of a display screen portion with animated graphical user interface showing my new design;
FIG. **4** is a front view of a second image thereof; and,
FIG. **5** is a front view of a third image thereof.
In the first embodiment, the appearance of the transitional image sequentially transitions between the images shown in FIGS. **1** through **2**. In the second embodiment, the appearance of the transitional image sequentially transitions between the images shown in FIGS. **3** through **5**. The process or period in which one image transitions to another image forms no part of the claimed design.
The broken line showing of a portion of a display screen and a computer device in FIGS. **1** through **5** forms no part of the claimed design. The broken line showing of text and portions of the graphical user interface in FIGS. **1** through **5** represents environmental subject matter and forms no part of the claimed design.

1 Claim, 5 Drawing Sheets



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D743,976	S		11/2015	Wilberding	
D744,501	S		12/2015	Wilberding	
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D754,685	S		4/2016	Carlton	
D757,094	S		5/2016	Xiang	
D758,421	S		6/2016	Liu	
D762,711	S		8/2016	Zhang	
D766,294	S		9/2016	Smith	
D766,954	S		9/2016	Smith	
D769,283	S		10/2016	Smith	
D769,284	S		10/2016	Wiesner	
D769,296	S		10/2016	Grecia	
D784,359	S		4/2017	Boot	
D785,003	S		4/2017	Yun	
D790,579	S		6/2017	Hays	
D792,890	S		7/2017	Cruttenden	
D797,795	S	*	9/2017	Park	D14/489
D803,258	S		11/2017	Graham	
D806,736	S		1/2018	Chung	
D807,902	S		1/2018	Cong	
D808,425	S	*	1/2018	Park	D14/492
D808,426	S	*	1/2018	Park	D14/492
D819,669	S		6/2018	Bronner	
D826,955	S		8/2018	Grecia	
10,049,376	B1		8/2018	Joglekar	
D829,765	S	*	10/2018	Crawford	D14/490
D837,805	S	*	1/2019	Kwak	D14/485
D853,405	S	*	7/2019	Park	D14/485
D857,054	S		8/2019	Grecia	
D857,712	S		8/2019	Grecia	
D918,934	S	*	5/2021	Anderson	D14/485
D920,342	S	*	5/2021	Unger	D14/485
D921,669	S	*	6/2021	Carrigan	D14/486
D922,430	S	*	6/2021	Kataoka	D14/491
D926,218	S	*	7/2021	Moreira	D14/488
2009/0018909	A1	*	1/2009	Grecia	G06Q 30/02 705/14.1
2010/0010906	A1	*	1/2010	Grecia	G06Q 20/405 705/21
2010/0060586	A1	*	3/2010	Pisula	G06F 3/04886 345/169
2011/0309138	A1	*	12/2011	Wu	G06K 7/1452 235/375
2012/0004968	A1		1/2012	Satyavolu	
2012/0150747	A1		6/2012	Carey	
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2016/0359987	A1		12/2016	Laliberte	
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Author: Early Warning Services, Webpage: https://play.google.com/store/apps/details?id=com.zellepay.zelle.

* cited by examiner

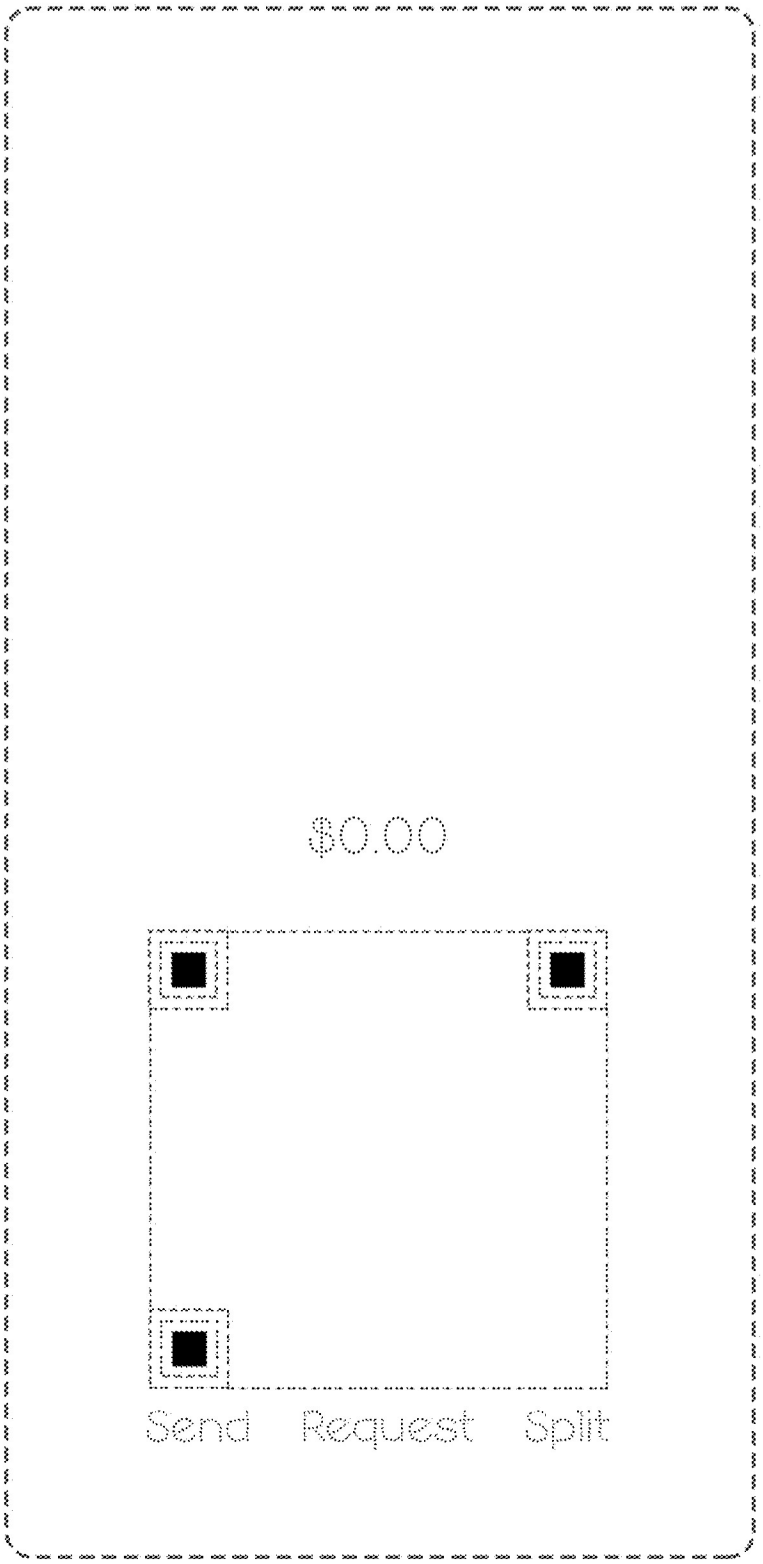


FIGURE 1

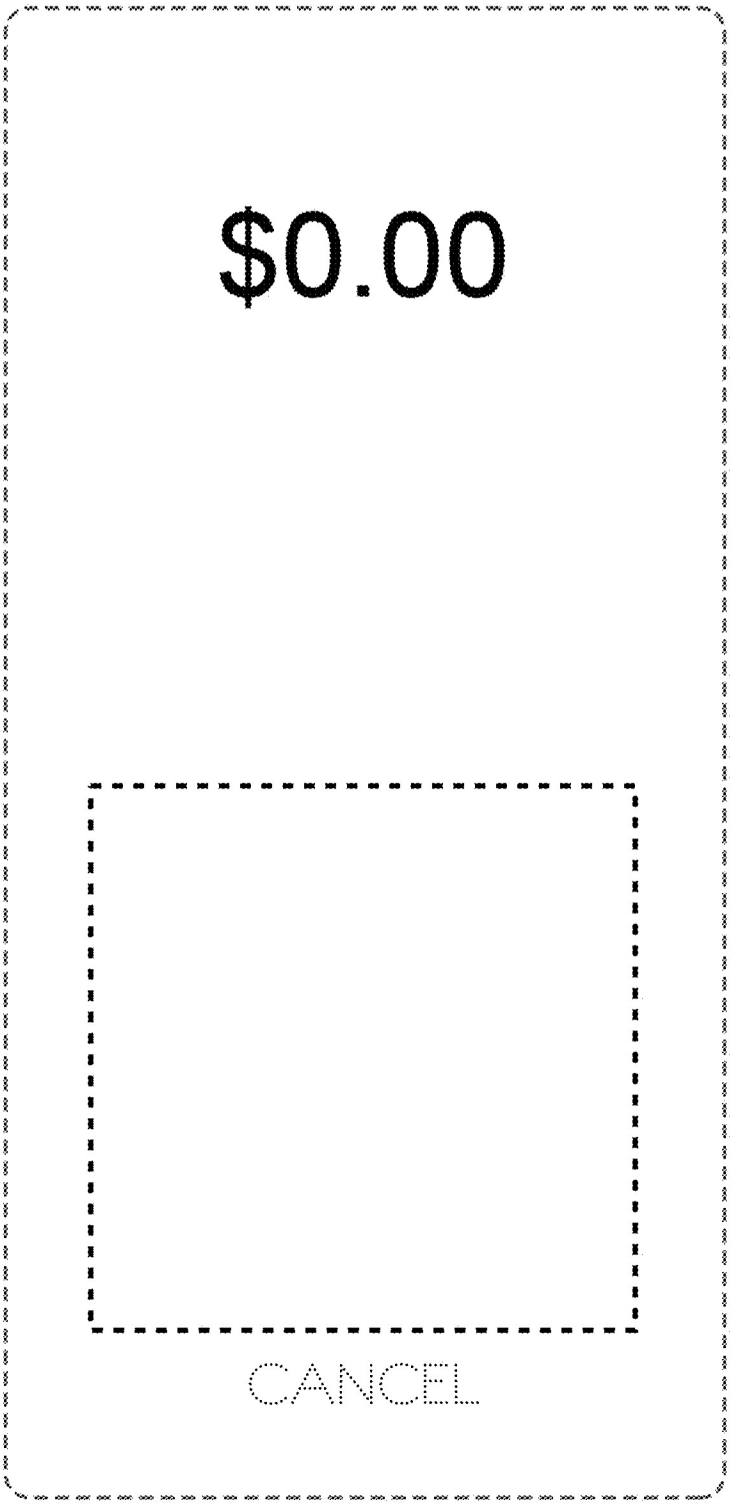


FIGURE 2

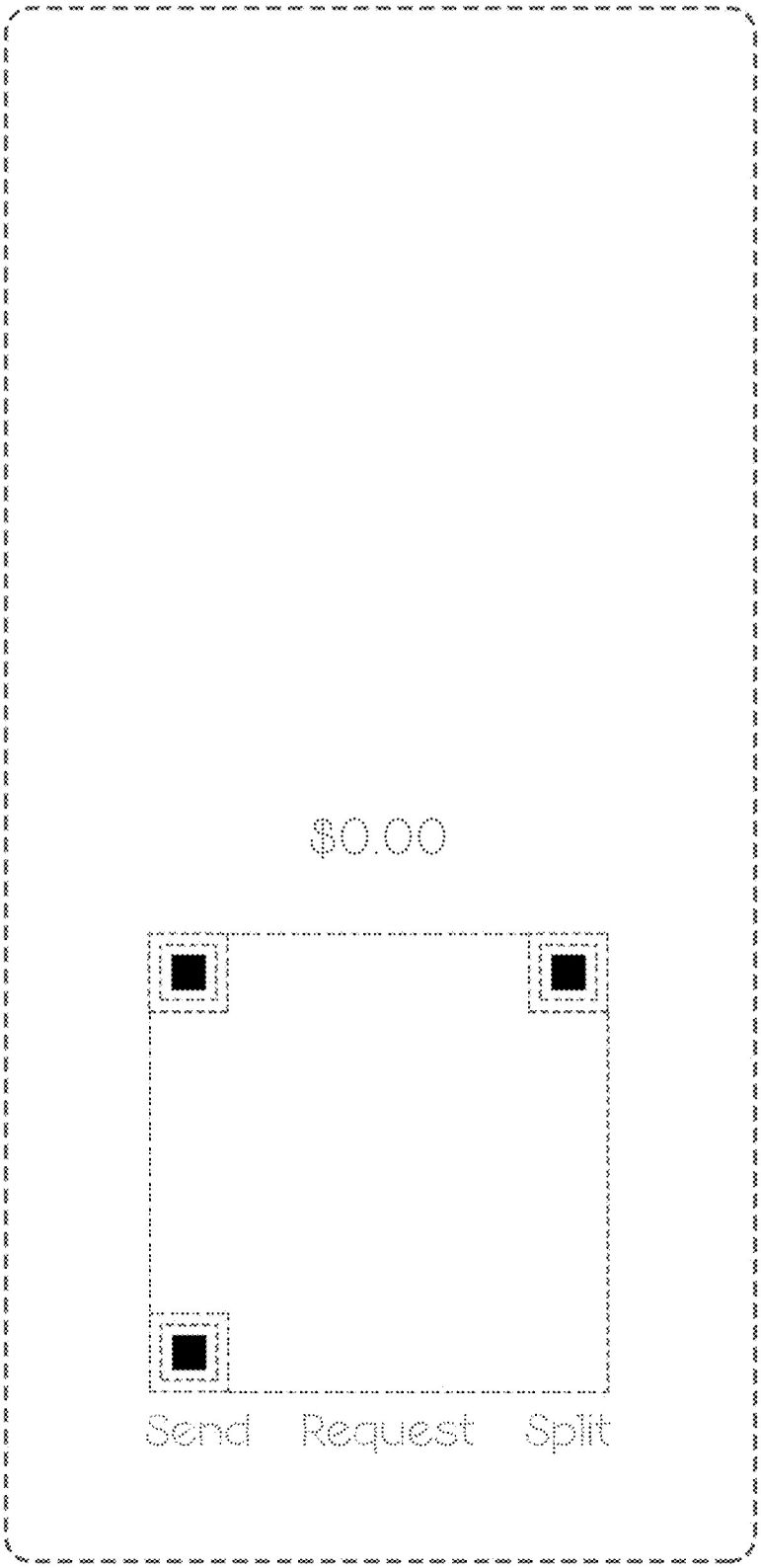


FIGURE 3

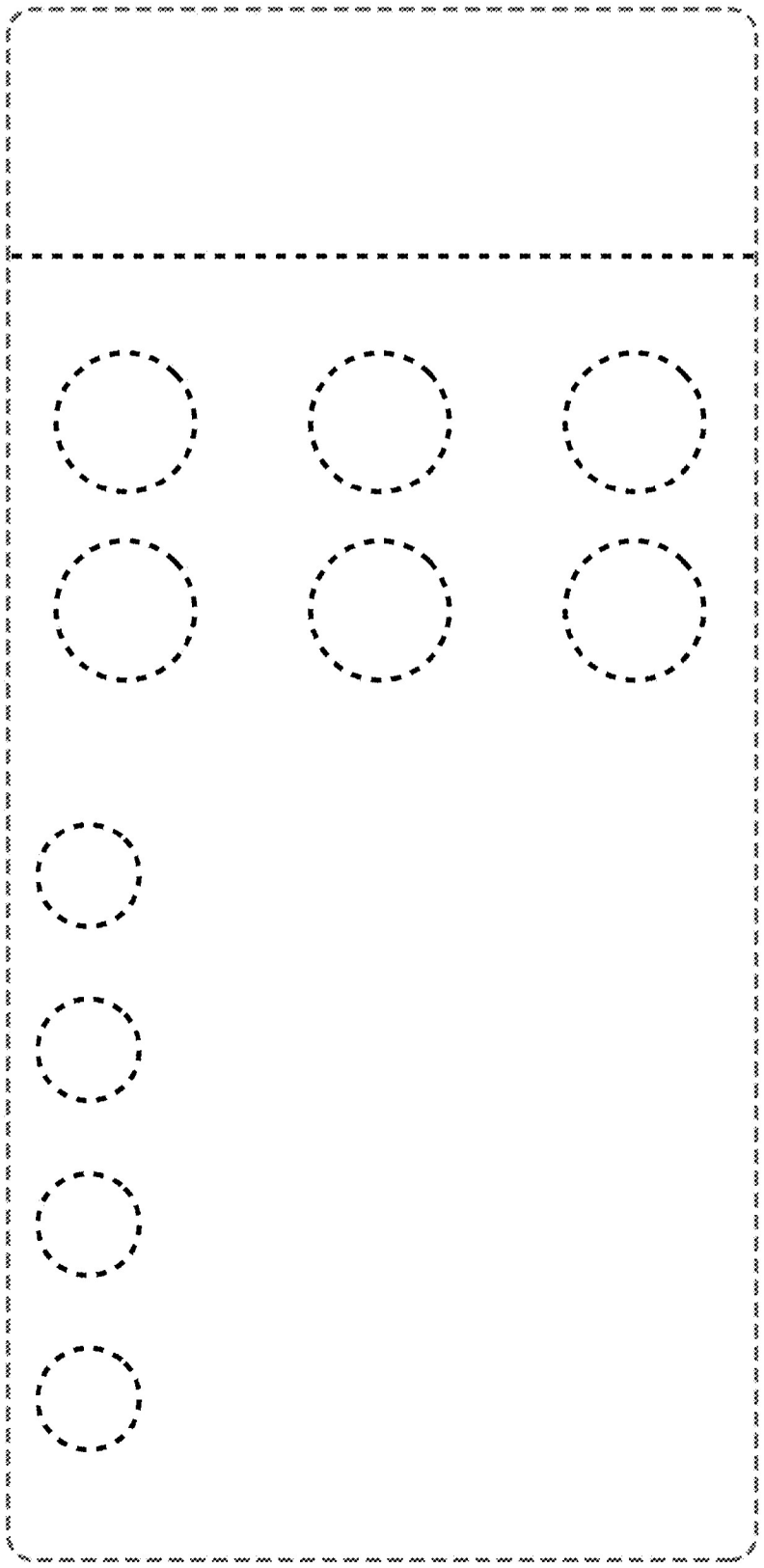


FIGURE 4

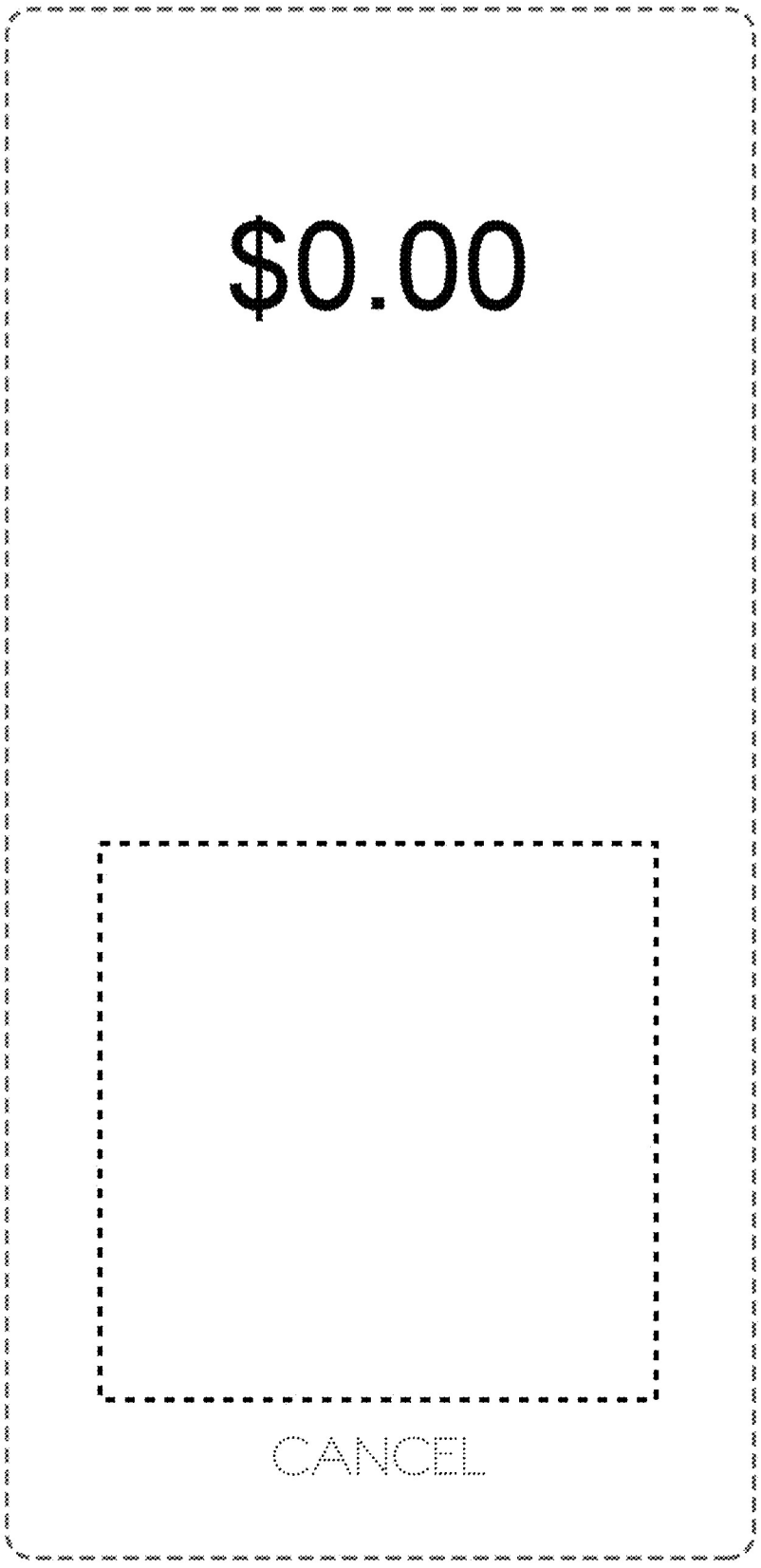


FIGURE 5

APPENDIX B
CLAIM CHART
COUNT I

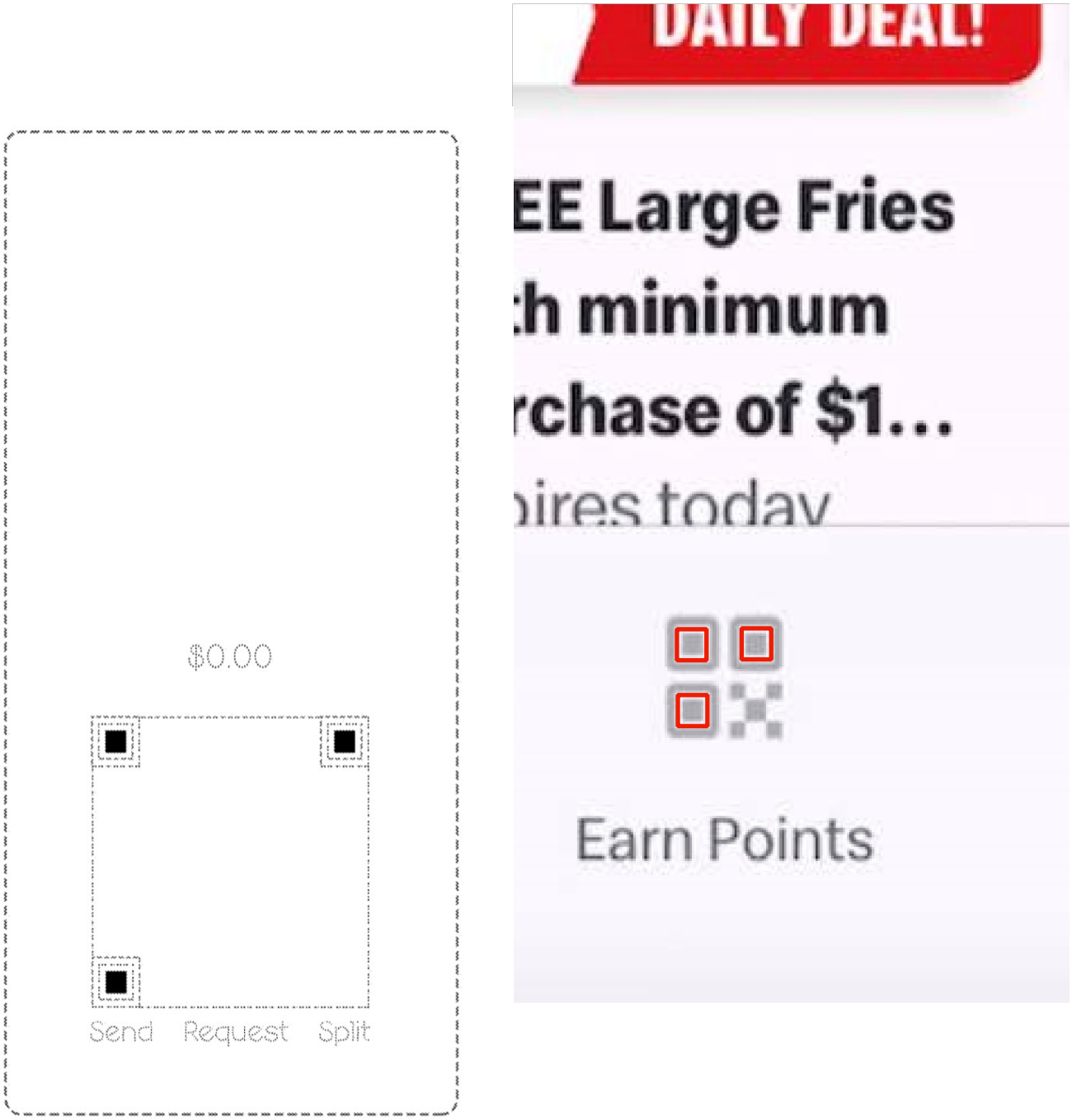

DAILY DEAL!
EE Large Fries
h minimum
rchase of $1...
ires today
Earn Points
$0.00
Send
Request
Split

FIGURE 1

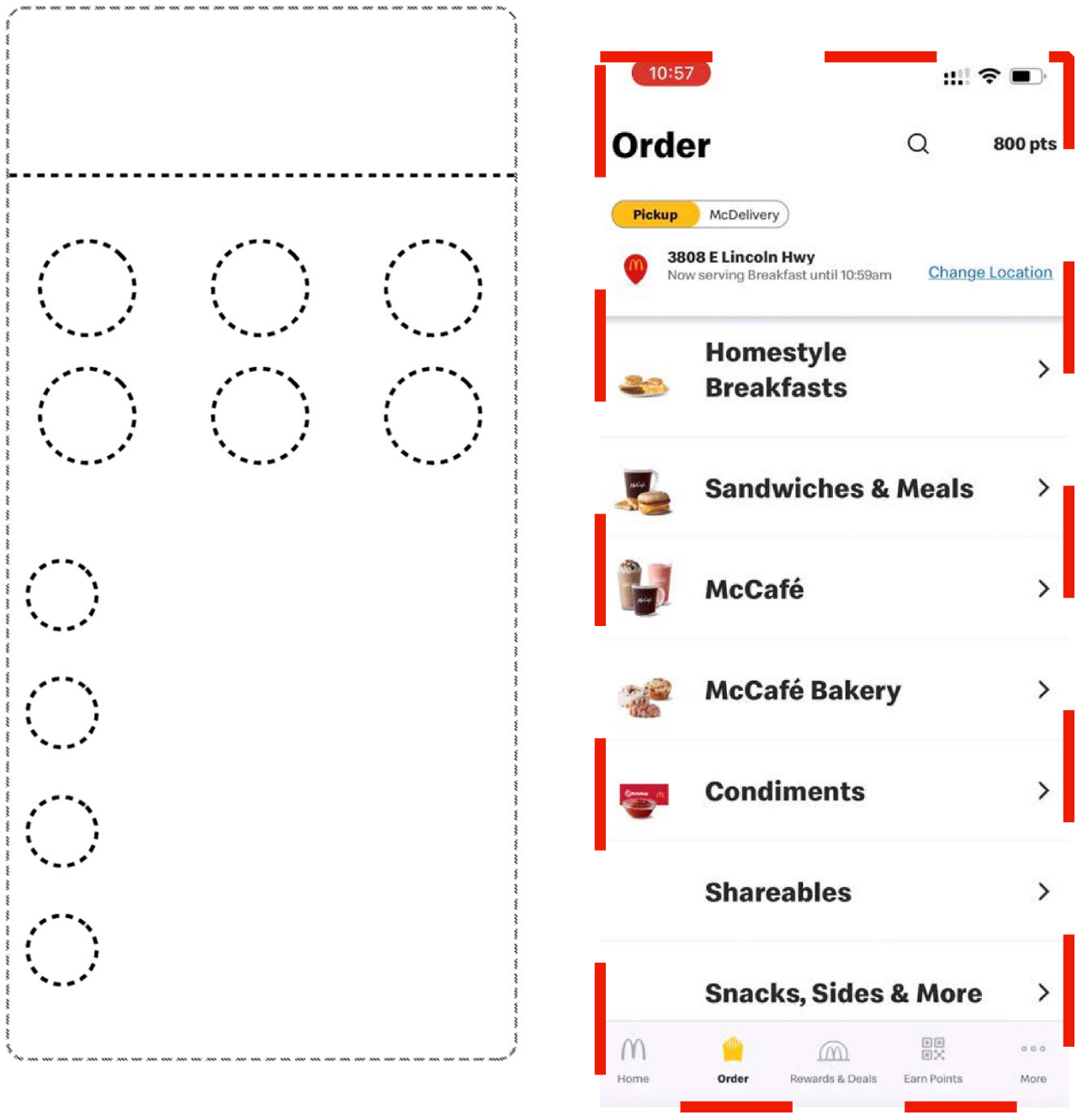
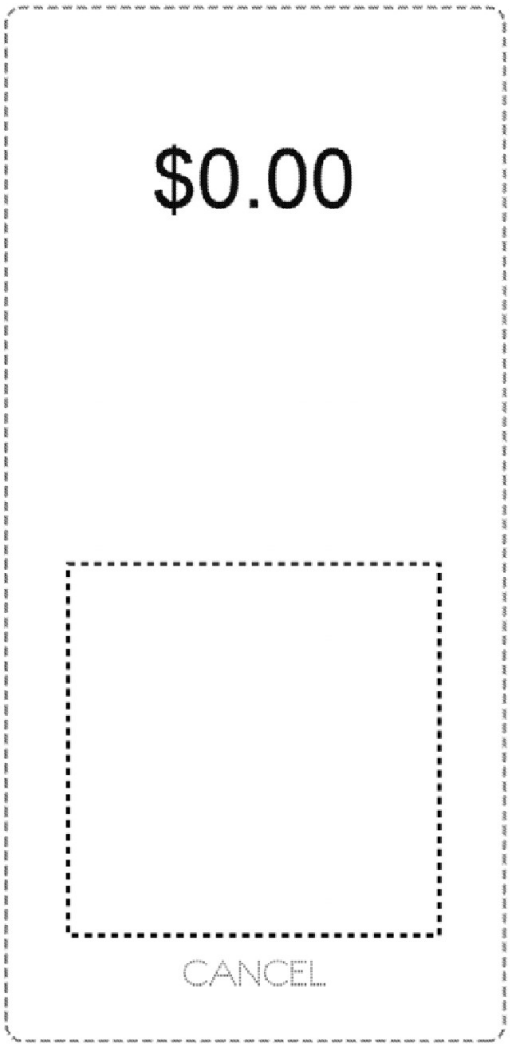


FIGURE 4

WGPLLC v McDonalds - D930,702 Second Embodiment Claimed Design
https://www.dropbox.com/s/jj1omf9jdsq2y4j/Evidence1mc.MP4?dl=0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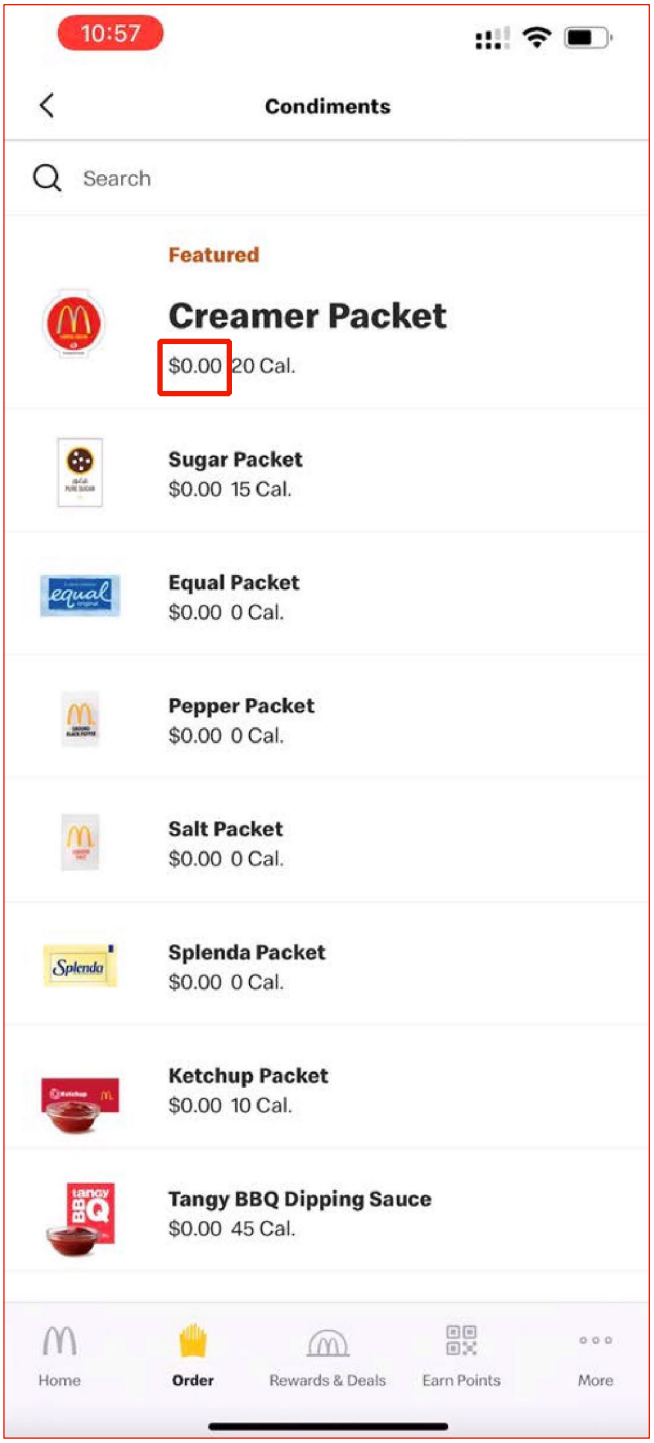
CANCEL

FIGURE 5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Condiments
Search
Featured
Creamer Packet
$0.00 20 Cal.
Sugar Packet
$0.00 15 Cal.
Equal Packet
$0.00 0 Cal.
Pepper Packet
$0.00 0 Cal.
Salt Packet
$0.00 0 Cal.
Splenda Packet
$0.00 0 Cal.
Ketchup Packet
$0.00 10 Cal.
Tangy BBQ Dipping Sauce
$0.00 45 Cal.
Home
Order
Rewards & Deals
Earn Points
More

APPENDIX C
CLAIM CHART
COUNT II

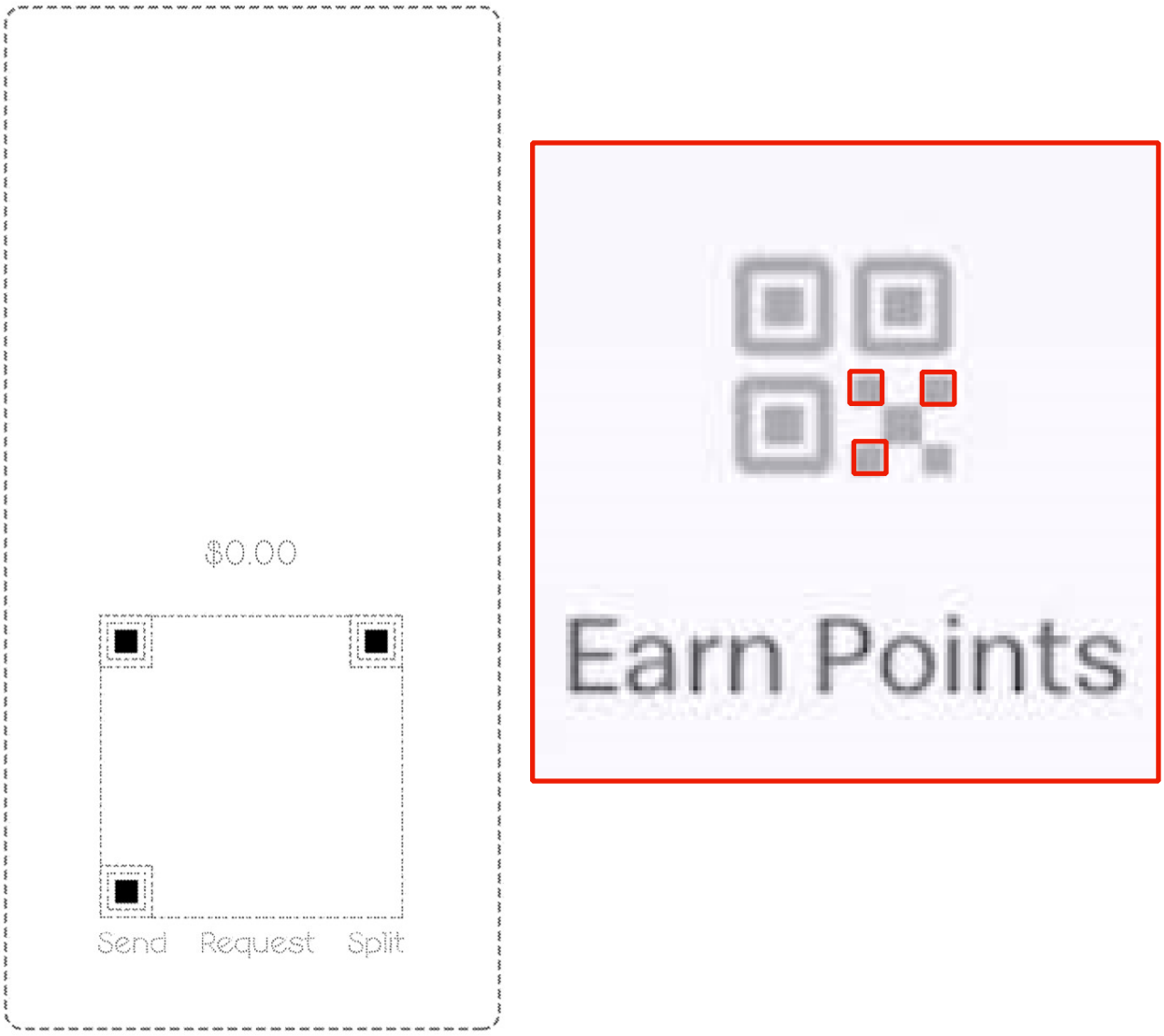


FIGURE 1

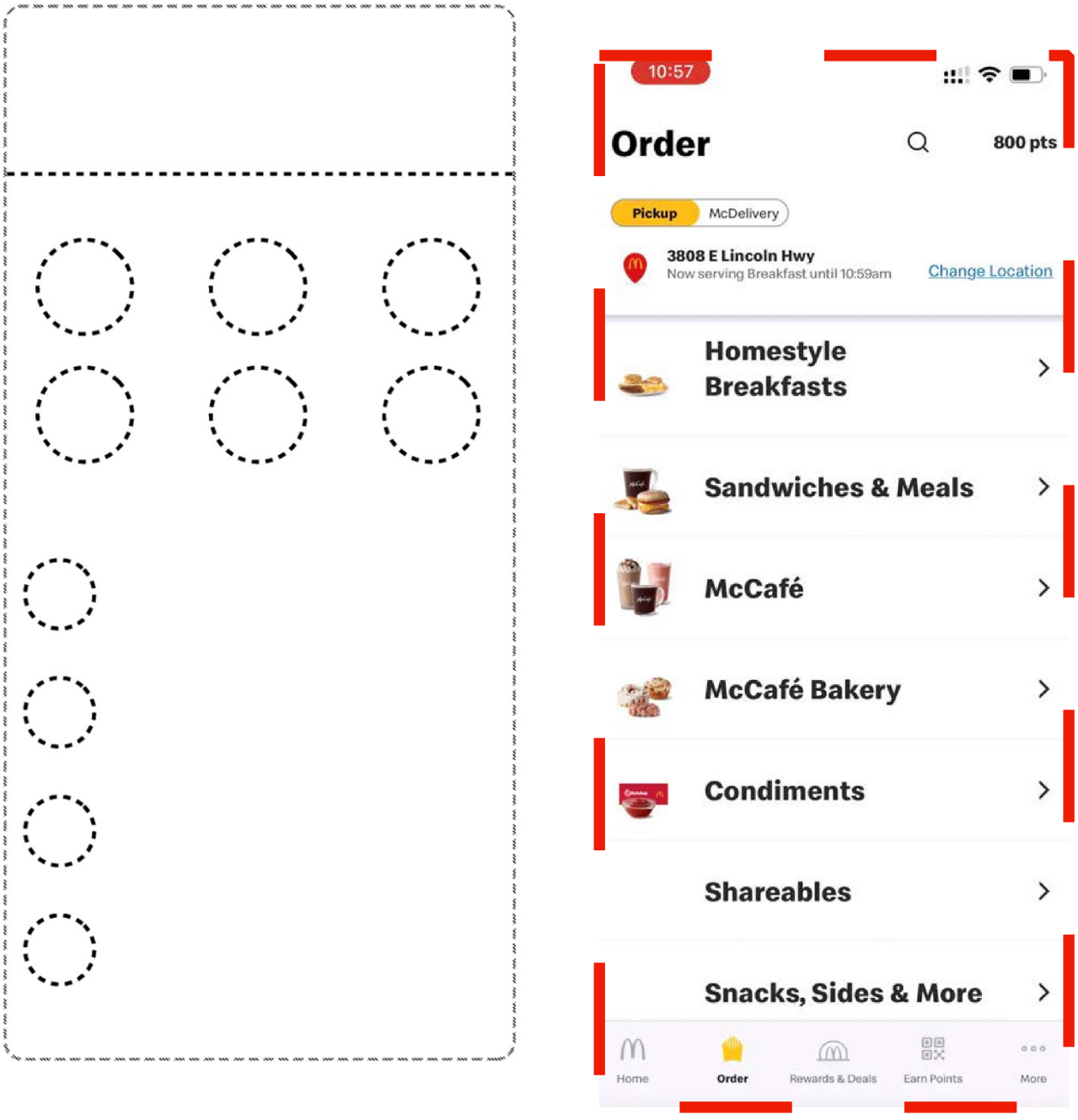
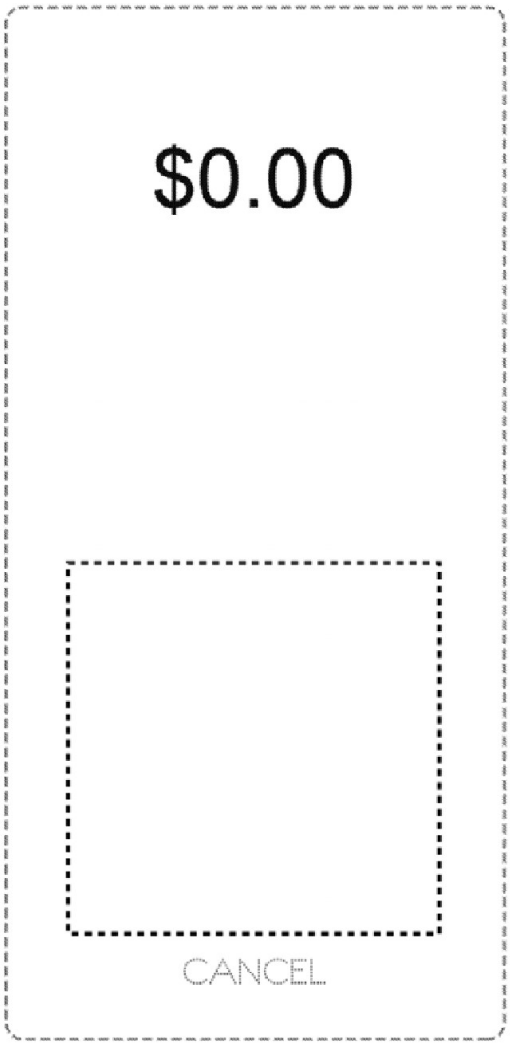

10:57
Order
800 pts
Pickup
McDelivery
3808 E Lincoln Hwy
Now serving Breakfast until 10:59am
Change Location
Homestyle Breakfasts
Sandwiches & Meals
McCafé
McCafé Bakery
Condiments
Shareables
Snacks, Sides & More
Home
Order
Rewards & Deals
Earn Points
More

FIGURE 4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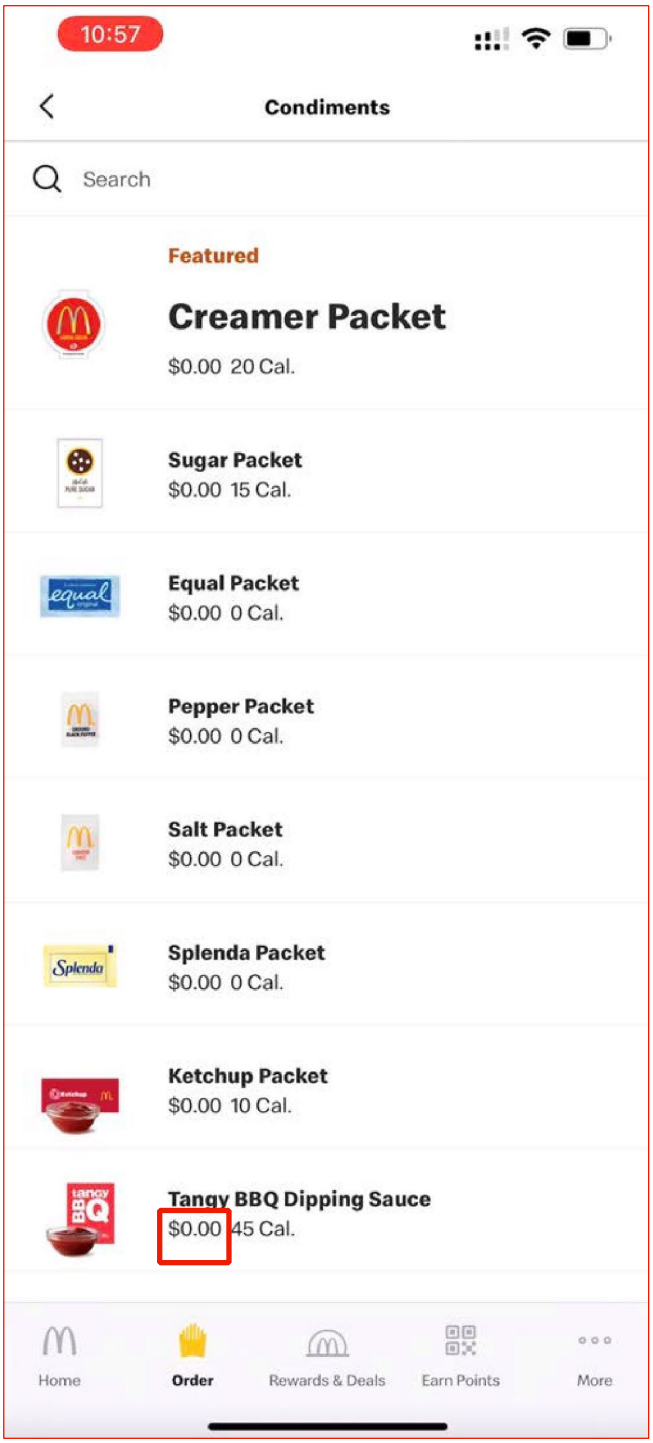
CANCEL

FIGURE 5


10:57
Condiments
Search
Featured
Creamer Packet
$0.00 20 Cal.
Sugar Packet
$0.00 15 Cal.
Equal Packet
$0.00 0 Cal.
Pepper Packet
$0.00 0 Cal.
Salt Packet
$0.00 0 Cal.
Splenda Packet
$0.00 0 Cal.
Ketchup Packet
$0.00 10 Cal.
Tangy BBQ Dipping Sauce
$0.00 45 Cal.
Home
Order
Rewards & Deals
Earn Points
More